

Freedom of Information Act (FOIA) Overview

Base FOIA Manager

Chris Roberts

75 CS/SCSRF

777-3296

FOIA Web Site: On AF Portal

<https://www.my.af.mil/gcss-af/USAF/ep/contentView.do?contentType=EDITORIAL&contentId=728328&command=addContext>

FOIA OVERVIEW

(History)

- Enacted in 1966 w/ amendments
- Established statutory right of public access to information in the federal government
- Virtually every record possessed by a federal branch agency must be made available to the public---
UNLESS it is specifically exempt from disclosure under one or more of the nine exemptions
- Applies only to “records” vs tangible objects

FOIA OVERVIEW

Governing Regulations

- DoD Regulation 5400.7/AF Supplement
- AFMC Supplement
- 75 CS/SCSRF Guidebook (upon request) also located on AF Portal 75 CS/SCSRF FOIA web site
- FOIA Briefing located on AF Portal 75 CS/SCSRF FOIA web site

FOIA OVERVIEW

(Records)

- AGENCY RECORDS---records that are either created or maintained by an agency; or under agency control at the time of the FOIA request
- Includes paper, books, maps, photographs, machine readable materials, and electronically kept records including e-mail
- A record must already be in existence at the time a FOIA request is made
- Under FOIA, there is no requirement to create a record to respond to an official request

FOIA OVERVIEW

- WHO CAN REQUEST RECORDS UNDER FOIA ?
 - A request can be made by “any person” - term encompasses individuals (including foreign citizens), partnerships (law firms), corporations, associations, and foreign governments
 - Requests can also be made on behalf of “any person” through an attorney or other representative

FOIA OVERVIEW

- Who may NOT make a FOIA request ?
 - Federal government agency
 - Fugitives from justice and their representatives if the requested records relate to the requester's fugitive status
 - Foreign governments or international governmental organizations, either directly or through a representative, requesting information from the intelligence agencies of the federal government (Intelligence Authorization Act, 2003)

FOIA OVERVIEW

- A FOIA request is perfected when?
 - Received in the Base FOIA Office (to be reviewed for statute requirements
 - must reasonably describe records sought
 - must be in writing (i.e., letter, fax, e-mail)
 - indicate a willingness to pay all processing fees (search, review, duplication fees)
 - must have a postal mailing address and a way to contact the requester

FOIA OVERVIEW

- After all requirements are met - request is officially logged in
- Assigned a case number
- Assigned a suspense date
- Processed to Organization's FOIA monitor who in-turn logs it and suspense's the OPR
- FOIA monitor also assists OPR with the package if needed and makes sure the OPR meets the suspense

FOIA OVERVIEW

- Simple Request
 - Can be processed quickly with limited impact on the responding units
 - The request clearly identifies the records with no (or few) complicating factors involved
 - There are few or no responsive records
 - No time extensions are anticipated
- Complex Request
 - Take substantial time and cause significant impact on responding units
 - Complications and delays are likely
 - Records sought are massive in volume
 - Multiple organizations must review/coordinate on requested records

FOIA OVERVIEW

- TIME LIMITS -
- Once accepted - We have 20 working days in which to make a release determination
- Unusual circumstances - agency can extend 20 day time limit; if we tell the requester in writing, along with when release determination will be made
- Notify FOIA office **immediately** *if* and *why* you need additional time
- Your request for more time will be reviewed

FOIA OVERVIEW

OPR ACTIONS

- Locate records - might even have to go to other offices or staging
- Determine releasability
- If *fully releasable*: OPR will sign in block II of the AFMC Form 559; next management level will sign in block III
- OPR will fill out DD Form 2086
- Return FOIA package to your Org FOIA monitor so he/she can close their suspense and forward package to the Base FOIA Manager. If your organization does not have a FOIA monitor return package directly back to the Base FOIA Manager

FOIA OVERVIEW

- Determine if records are or are not releasable ?
- OPR will accomplish analysis
- OPR will contact Base JA
- JA will either concur or not
- If JA concurs: OPR will initiate a denial package (partial or whole)
- OPR will sign in block II of the AFMC Form 559; next management level will sign in block III
- OPR will fill out DD Form 2086
- Redaction – can white out and bracket or black out. Must put applicable exemption in margin
- Example of redaction – white out ... [] b3 or black out... [REDACTED] b3
- Base FOIA Office – has samples for review
 - Sit-down - go over requirements if requested

FOIA OVERVIEW

- Other FOIA Responses
 - No Records - the OPR has accomplished a thorough search - active records/inactive records/staging area - no records found
- - Records are located elsewhere - another office/another installation - advise your organizational monitor and return FOIA file to Base FOIA manager indicating where the files are kept
- - Withdrawn - Requester decides the requested information is no longer required
- - Glomar – neither confirm nor deny the existence of the record

FOIA OVERVIEW

Exemptions

- You have decided some/all of requested information is not releasable —
- Exemption 1 – Classified information regarding national security or foreign relations
- Exemption 2 – Internal personnel rules/practices of an agency
 - Low 2 – trivial matters
 - High 2 – predominately internal matters the disclosure of which would risk circumvention of a statute or agency regulation
- Exemption 3 – Records protected from release by other statutes
- Exemption 4 – Trade secrets or commercial or financial information that is privileged or confidential
- Exemption 5 – Information considered privileged in litigation, primarily under the deliberative process privilege
- Exemption 6 – Personal Privacy of individuals

FOIA OVERVIEW

Exemptions Cont-

- Exemption 7 - Information compiled for law enforcement purposes
 - 7A - Could interfere with on-going investigation
 - 7B - Would interfere with fair trial
 - 7C - Could cause unwarranted invasion of personal privacy
 - 7D - Confidential sources
 - 7E - Would reveal investigative techniques
 - 7F - Safety of individuals (undercover agents)
- Exemption 8 - Bank records
- Exemption 9 - Geological or Geophysical information concerning wells

FOIA OVERVIEW

- Agencies are not required to:
 - Answer questions posed as FOIA requests
 - Create records in response to a request
 - Modify exempt info to make it disclosable
 - Add explanatory notes to any records disclosed
 - Seek the return of records over which they have no control
 - Recreate records that were properly disposed of

FOIA OVERVIEW

- Perpetual Requests - agencies are not compelled to make automatic release of records as they are created
- Agency Regulations - requester must follow an agency's regulations in making a request
- Delays in processing - agencies should allow the requester an opportunity to modify their request or arrange for an alternative time frame for completion of the agency's processing

FOIA OVERVIEW

Extensions

- Unusual circumstances are:
 - The need to search for and collect records from separate field offices
 - The need to examine a voluminous amount of records required by the request
 - The need to consult with another agency or agency component

FOIA OVERVIEW

- OPRs - keep your organizational monitor informed at every step
- Monitor's - keep the Base FOIA office informed of any/all problems/concerns during processing
- Very detailed/legal questions/concerns - OPR may want to call their JA representative
- **MOST IMPORTANT - SUSPENSE DATES**

FOIA OVERVIEW

Conclusions

- Suspense dates – 20 working day time limit is set by federal law (not by the FOIA Office) -- must be met
- Questions -- Concerns ?
 - Chris Roberts @ 777-3296